

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1959 of 1983

With

CROSS OBJECTIONS.

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and sd/-

MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement?

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
3 to 5 No

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

HIRABEN W/O.PRAJAPATI MANIBHAI

Appearance:

MR MG NAGARKAR for Appellant.

MR PJ YAGNIK for Respondents No. 1 to 7.

NOTICE SERVED for Respondent No.8,9,10,11,12,13,14,15

CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE M.C.PATEL

Date of decision: 02/11/98

ORAL JUDGEMENT(Per R.K.Abichandani,J.):

The appellant-Corporation challenges the judgment and award dated 11th April, 1983 made by the Motor Accident Claims Tribunal (Main), Narol, in M.A.C. Application No.471 of 1980 by which the original opponents Nos.1 and 2, i.e. the present respondent No.8 and the appellant, were ordered to pay the claimants an amount of Rs.1,00,000/- together with running interest thereon at the rate of 6 per cent per annum from the date of the filing of the application till the realisation of the amount towards the claim of the original applicants.

The accident occurred on 7th June, 1980 at the intersection of two cross-roads, namely 'CH' road and 'CHH road' at Gandhinagar. At that time, the scooter was being driven by Subodhchandra, and Manibhai was the pillion-rider. The S.T. Bus, which dashed the scooter, was being driven by the original opponent No.1, the present respondent No.8, while he was working as a driver of the Corporation, who was the owner of the bus. Both Subodhchandra and Manibhai succumbed to their injuries. The claimants are the legal representatives of Manibhai and they claimed compensation of Rs.1,10,000/- for loss of dependency benefit suffered by them as a result of death of the Manibhai.

According to the claimants, at the relevant time, Subodhchandra was driving his scooter at a moderate speed on the correct side of the road and had crossed the north-south width of the intersection of the two cross-roads to the extent of more than half the distance and, at that time, the S.T. Bus entered the intersection from the northern side at an extremely fast speed and on its wrong side and had dashed the scooter, as a result of which the driver of the scooter, Subodhchandra, and the pillion-rider, Manibhai, were thrown off the scooter, resulting in severe injuries to them, to which they succumbed. According to the claimants, the accident was caused as a result of the rash and negligent driving of the S.T. Bus Driver. The deceased, who was 51 years of age at the relevant time, was working as a brick-manufacturer and according to the claimants, he was earning Rs.1000/per month. On this basis, the claim was quantified at Rs.1,10,000/-.

The driver and the Corporation opposed the claim, contending that the accident had occurred entirely due to the negligence and rashness of the scooterist, Subodhchandra. It was alleged in the written statement, Exh.12, that the bus was crossing the intersection and at that time the scooter had entered the intersection at an excessive speed and collided with the bus. In the

alternative, it was contended, that the scooterist, Subodhchandra, was guilty of contributory negligence and that the accident had occurred largely due to his negligence.

The Tribunal, answering the issues at Exh.14, held that Manilal died as a result of the rash and negligent driving of the bus-driver and that the claimants had proved their claim to the extent of Rs.1,00,000/-

The cross-objections have been filed in this appeal in which the original claimants have claimed a further sum of Rs.10,000/-.

The learned Counsel, appearing for the appellant, contends before us that the scooterist alone was responsible for the accident in question. It was argued that since the S.T. Bus was coming from the right side, the scooterist ought to have allowed it to proceed, instead of entering the intersection for turning towards south. It was contended that in any event the scooterist had contributed by his negligence in the occurrence of the accident and therefore the claim ought to have been reduced to the extent of the contributory negligence of the scooterist.

Admittedly, the bus-driver was not examined by the Corporation and he did not appear in the matter to contest the proceedings, nor was the conductor of the bus examined. None of the passengers of the bus was examined. Certified copy of the evidence of Madanlal, who had deposed in M.A.C. Case No.471 of 1980, which was filed by the legal representatives of Subodhchandra, was produced on record at Exh.69, by consent of both sides. The panchnama of the scene of occurrence is at Exh.71. According to Madanlal, on 7.6.1980 he was following on his scooter Subodhchandra and Manibhai, who were going ahead of him. At the time when Subodhchandra entered the intersection of 'CH'-'CHH' cross-roads, his scooter was just about 100 feet behind the scooter of Subodhchandra, who took a southward turn at the intersection. Immediately thereafter, the S.T. bus speedily came from the northern side while it was proceeding on the north-south road from the north to the south, and the left corner of the front bumper of the bus hit the rear part of the scooter driven by Subodhchandra, as a result of which it got entangled with the left front wheel region of the bus and was dragged for some distance. The bus ultimately stopped at a considerable distance from the spot of the first impact. When this witness reached

near Subodhchandra, he found him dead. The pillion rider Manilal was run over by the bus on his abdomen and was in intense pain. The Panchnama, Exh.71, was drawn. This witness was one of the panchas.

It transpires from the deposition of Madanlal that Subodhchandra was driving his scooter from east towards the west and had entered the intersection, taking a southward turn, and at that stage the S.T. bus came with an excessive speed along the north-south road and its left front portion had dashed the scooter, dragging it towards the south. According to Madanlal, the bus came at a breakneck speed. Admittedly, Madanlal was selected by the police to act as a Panch and the panchnama, Exh.71, discloses that the scooter was found in a completely crushed condition lying at a distance of 104 feet from the spot where the first impact took place. There were marks on the road indicating that the scooter was dragged for a distance of 60 feet. The paint of the scooter was found on the left corner of the front bumper of the bus, and the total distance between the spot of the first impact and the place where the bus was standing was 140 feet and the scooter was dragged for some distance where it got disentangled from the bus. It is evident from the deposition of Madanlal and the panchnama, Exh.71, that the bus was driven at an extremely high speed as a result of which the scooter which it dashed, was dragged and thrown 104 feet away from the point of the first impact. The evidence clearly discloses that the accident in question occurred as a result of the sole negligence and rashness on the part of the bus-driver. We, therefore, find ourselves in complete agreement with the reasoning of the Tribunal for holding that it was proved that Manilal died as a result of the rash and negligent driving of the S.T. bus in question by the driver.

As regards the quantum of compensation, the only challenge raised by the appellant is that the calculation of income by the Tribunal is on a higher side and that there was no cogent evidence to prove the datum figure of Rs.7200/-. It was found from the evidence on record by the Tribunal that Manilal was doing brick-business, which was a seasonal business, and that during the off seasion period, he would have taken up some other work. It was rightly held that potentiality of the deceased to earn more than what he was earning from his brick-manufacturing business was wiped out by the accidental death. On the basis of the evidence on record, the Tribunal estimated the earning of Manilal at at least Rs.800/- per month, and after deducting a sum of

Rs.200/- per month, which he would have spent on himself, the balance of Rs.600/- per month was taken as the basis for working out the amount of Rs.7200/- per year, which he would have spent for the benefit of his family. Having regard to the nature of business that Manilal was doing and the possibility of his doing other work during the off season period, in our opinion, the Tribunal rightly estimated his monthly income at Rs.800/and worked out the datum figure at Rs.7200/- per year. There is, therefore, absolutely no valid reason for interfering with the quantum figure of Rs.1,00,000/- awarded to the original claimants.

The Tribunal applied 13 years' multiplier to the datum figure in case of the deceased, who was about 51 years of age at the time of the accident, as per his School Leaving Certificate, Exh.64. There is no warrant for allowing the additional amount of Rs.10,000/-, claimed in the Cross Objections filed by the original claimants, since the amount of Rs.93,600/- is worked out on a rational and proper basis as reasonable compensation for the loss of dependency benefit suffered by the claimants.

Under the above circumstances, we find no merit in this appeal as well as in the Cross Objections. The appeal is, therefore, dismissed with no order as to costs. The Cross Objections are also dismissed, with no order as to costs. Interim stay will stand vacated.
